



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R01-OAR-2010-0380; A-1-FRL-9648-5 ]**

**Approval and Promulgation of Air Quality Implementation Plans; Connecticut;  
Determination of Attainment of the One-hour Ozone Standard for the Greater Connecticut  
Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** The EPA is determining that the Greater Connecticut serious one-hour ozone nonattainment area did not meet the applicable deadline of November 15, 2007, for attaining the one-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon complete, quality-assured, certified ambient air monitoring data that show the area had an expected ozone exceedance rate above the level of the now revoked one-hour ozone NAAQS for the 2005-2007 monitoring period. Separate from and independent of this determination, EPA is also determining that the Greater Connecticut serious one-hour ozone nonattainment area currently attains the now revoked one-hour NAAQS for ozone, based upon complete, quality-assured, certified ambient air monitoring data for 2008- 2010. The area first attained the one-hour NAAQS during the 2006-2008 monitoring period, and continued in attainment during the 2007-2009, and 2008-2010 monitoring periods. Quality assured and quality controlled, but not yet certified ozone data available for 2011 indicate that the area continues to attain the one-hour NAAQS. These determinations are made under the Clean Air Act.

**EFFECTIVE DATE:** This rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2011-0711. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA 02109-3912. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, telephone number (617) 918-1664, fax number (617) 918-0664, email Burkhart.Richard@epa.gov.

## **SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble.

I. What Actions Is EPA Taking?

II. What Is the Effect of These Actions?

III. Final Action

IV. Statutory and Executive Order Reviews

### **I. What Actions Is EPA Taking?**

EPA is taking two separate and independent actions for the Greater Connecticut one-hour ozone serious nonattainment area (hereafter, “the Greater Connecticut area”).

#### **A. Determination of Failure to Attain by Applicable Attainment Date**

EPA is determining that the Greater Connecticut area did not attain the one-hour ozone National Ambient Air Quality Standard (NAAQS) by the applicable attainment date, November 15, 2007. This determination is based upon complete, quality-assured and certified air quality monitoring data for the 2005 through 2007 ozone seasons.

## B. Determination of Current Attainment

In addition, EPA is determining that the Greater Connecticut area is currently attaining the one-hour ozone NAAQS based upon complete, quality-assured and certified ambient air monitoring data showing the area currently monitored attainment of the one-hour ozone NAAQS, and that it has done so continuously since the 2006-2008 monitoring period.

Other specific details related to these determinations and the rationale for EPA's action are explained in the Notice of Proposed Rulemaking (NPR) published on November 23, 2011 (76 FR 72377) and will not be restated here. No comments were received on the NPR.

## II. What Is the Effect of These Actions?

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements. See *SCAQMD v. EPA*, 47 F.3d 882, at 903. In keeping with this responsibility, EPA has determined that Greater Connecticut failed to attain the one-hour ozone standard by its applicable attainment date. Consistent with 40 CFR 51.905(e)(2), and the South Coast decision, upon revocation of the one-hour ozone NAAQS for an area, EPA is no longer obligated to determine whether an area has attained the one-hour NAAQS, except insofar as it relates to effectuating the anti-backsliding requirements that are specifically retained. EPA's determination here is linked solely to required, one-hour anti-backsliding, contingency measures. A final determination of failure to attain will not result in reclassification of the area under the revoked one-hour standard, nor is EPA identifying or determining any new one-hour reclassification for the area. EPA is no longer required to reclassify an area to a higher classification for the one-hour ozone NAAQS based upon a

determination that the area failed to attain that NAAQS by its attainment date. See 40 CFR 51.905(e)(2)(i)(B). Moreover, EPA has previously approved the one-hour ozone attainment demonstration and Reasonable Further Progress (ROP) plans for this area, and in doing so noted that although there were no state implementation plan contingency measure reductions applicable to the Greater Connecticut area for failure to attain, there were federal measures the state had not accounted for in its attainment demonstration that provided more reductions than necessary to serve the purpose of contingency measures for this area. See 66 FR 634, January 3, 2001. In addition, EPA has also determined that the Greater Connecticut area attained the one-hour ozone standard in 2008, and continues to attain this standard. In this context, EPA has also determined that there are not any additional obligations, including those relating to one-hour ozone contingency measures, for the Greater Connecticut area under the one-hour ozone standard.

### **III. Final Action**

EPA is determining that the Greater Connecticut one-hour ozone nonattainment area did not meet its applicable one-hour ozone attainment date of November 15, 2007, based on 2005-2007 quality-assured ozone monitoring data. Separate from and independent of this determination, EPA is also determining that the Greater Connecticut one-hour ozone nonattainment area is currently attaining the one-hour ozone standard, based on the most recent three years (2008-2010) of complete, quality-assured ozone monitoring data at all monitoring sites in the area. EPA's review of the data shows that the area began attaining the one-hour ozone standard in the 2006-2008 period, and has continued to attain this standard through the 2007-2009 and 2008-

2010 monitoring periods. Quality assured and quality controlled, but not yet certified, ozone data available for 2011 indicate that the area continues to attain the one-hour NAAQS.

#### **IV. Statutory and Executive Order Reviews**

These actions make determinations of attainment based on air quality, result in the suspension of certain Federal requirements, and would not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these actions do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule is effective on **[Insert 30 days from publication in the Federal Register]**.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 8, 2012

H. Curtis Spalding  
Regional Administrator,  
EPA New England.



Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 - [AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart H - Connecticut**

2. Section 52.377 is amended by adding paragraph (i) to read as follows:

**§ 52.377 Control strategy: Ozone.**

\* \* \* \* \*

(i) Determination of Attainment for the One-Hour Ozone Standard. Effective [**INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER**], EPA is determining that the Greater Connecticut one-hour ozone nonattainment area did not meet its applicable one-hour ozone attainment date of November 15, 2007, based on 2005-2007 complete, quality-assured ozone monitoring data. Separate from and independent of this determination, EPA is determining that the Greater Connecticut one-hour ozone nonattainment area met the one-hour ozone standard, based on 2008-2010 complete, quality-assured ozone monitoring data at all monitoring sites in the area. EPA's review of the ozone data shows that the area began attaining the one-hour ozone standard during the 2006-2008 monitoring period, and has continued attaining the one-hour standard through the 2007-2009 and 2008-2010 monitoring periods.

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